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7

8 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

9 In the Matter of

10 **JEFFREY GOLDEN,**

11 Holder of License No. T010493
12 As a Pharmacy Technician Trainee
13 In the State of Arizona

Board Case No. 09-0025-PHR

**COMPLAINT AND NOTICE OF
HEARING**

14 **I. NOTICE OF PUBLIC HEARING.**

15 YOU ARE HEREBY NOTIFIED, the Arizona State Board of Pharmacy ("Board")
16 will conduct an administrative hearing at the following place and time, to determine
17 whether grounds exist to revoke or take other action regarding Pharmacy Technician
18 Trainee License No. T010493 held by Jeffrey Golden ("Respondent"):

19 **Arizona State Board of Pharmacy**
20 **1700 W. Washington Street, 3rd Floor Board Room**
21 **Phoenix, Arizona 85007**
22 **On May 7, 2009, at 9:00 a.m.**

23 and continuing on successive days until concluding, concerning the matters set forth in
24 this Complaint and Notice of Hearing, at which time and place, evidence, testimony and
25 argument in support of the charges set forth in the Complaint will be presented. If you
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1 desire to make a defense to the charges at the hearing, you may appear at the hearing in
2 person and may be represented by legal counsel and may at that time cross-examine the
3 witnesses against you and present testimony of witnesses, evidence and argument in your
4 own behalf.

5 **Whether or not you intend to appear at the hearing, pursuant to A.R.S. § 32-**
6 **1927.01(O), YOU ARE REQUIRED to prepare and file a written Answer to the**
7 **allegations alleged in the above Complaint with the Board within 30 days after**
8 **service of this Complaint and Notice of Hearing.** Your Answer should contain specific
9 admissions or denials of the allegations of the Complaint, and may contain concise
10 factual allegations which you contend constitute a ground or grounds for defense. Your
11 Answer must be in writing, verified under oath, and filed with the Board within thirty
12 (30) days after service of the Complaint. *Id.* **THE BOARD SHALL CONSIDER**
13 **YOUR FAILURE TO RESPOND WITHIN THIS TIME AS YOUR ADMISSION**
14 **BY DEFAULT TO THE ALLEGATIONS STATED IN THE COMPLAINT.** *Id.*
15 The Board may then take any action allowed by § 32-1927.01 without conducting a
16 hearing. If you Answer and fail to appear for the hearing, the Board may proceed in your
17 absence. If you desire to waive a hearing and not contest the facts herein alleged, you
18 may file an Answer consisting of a declaration that the material allegations of the
19 Complaint are admitted.

20 After the hearing, if the Board determines that you have committed unprofessional
21 conduct or that you are professionally incompetent or physically or mentally
22 incapacitated to such a degree as to render you unfit to safely perform your employment
23 duties, the Board may revoke or suspend your license, place you on probation, issue you
24 a decree of censure or letter of reprimand, or impose upon you a civil penalty of not more
25 than \$1,000 for each violation. A.R.S. § 32-1927.01(A), (B). The Board may also charge
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1 you for the costs of the administrative hearing. A.R.S. § 32-1927.01(C).

2 In accordance with Title II of the Americans with Disabilities Act (ADA), the
3 Board does not discriminate on the basis of disability in admission to and participation in
4 hearings. Should you, or anyone you call as a witness need special accommodations,
5 please contact the Board office at (602) 771-2727 at least three working days before the
6 hearing.

7 Pursuant to A.R.S. § 32-3206, you have the right to request a copy of the
8 following information from the Board:

- 9
- 10 1. Any review conducted by an expert or consultant providing an evaluation
of or opinion on the allegations.
 - 11 2. Any records on the patient obtained by the board from other health care
providers.
 - 12 3. The results of any evaluations or tests of the health professional conducted
at the board's direction.
 - 13 4. Any other factual information that the board will use in making its
determination.

14 Please be advised that if you obtain the above-referenced information from the board, you
15 may not release it to any other person or entity or use it in any proceeding or action
16 except the administrative proceeding or appeals related to the administrative proceeding.
17 Violation of this restriction constitutes an act of unprofessional conduct per A.R.S. § 32-
18 3206(B). Also, please be advised that pursuant to A.R.S. § 32-3206(C), you or your
19 attorney may be charged for the cost of providing the information received up to the fee
20 for making a copy of each page as prescribed by A.R.S. § 12-284(A).

21 **PARTIES AND JURISDICTION**

22 1. The Board is the duly constituted authority for licensing and regulating the
23 practice of pharmacy in the State of Arizona.

24 2. Respondent is the holder of license number T010493, which allows him to
25 practice as a pharmacy technician trainee in the State of Arizona.

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1 3. Under A.R.S. § 32-1901, *et seq.*, the Board possess jurisdiction over the
2 subject matter and over Respondent as a licensee of the Board.

3 **FACTUAL ALLEGATIONS**

4 1. During all times relevant to this Complaint, Respondent was employed as a
5 pharmacy technician trainee at CVS Pharmacy #9223 in Phoenix, Arizona (the
6 “Pharmacy”).

7 2. In February 2008, CVS loss prevention personnel interviewed Respondent
8 concerning a loss of controlled substances. Respondent admitted diverting the following
9 controlled substances from the Pharmacy: hydrocodone/APAP 10/325 (8,000 tablets),
10 hydrocodone/APAP 10/500 (4,000 tablets), hydrocodone/APAP 7.5/500 (500 tablets),
11 hydrocodone/APAP 10/600 (500 tablets), Tussionex (cough syrup with hydrocodone)
12 (473 ml), diazepam 5 mg (250 tablets), Ambien (zolpidem) 12.5 mg (100 tablets), and
13 carisoprodol 350 mg (1500 tablets). Respondent admitted to taking the controlled
14 substances for personal consumption.

15 3. Respondent further admitted to diverting 100 tablets of Viagra 10 mg to
16 give to another person.

17 4. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-
18 2514(A)(5)(d).

19 5. Cough syrup with hydrocodone is a Schedule III controlled substance.
20 A.R.S. § 36-2514(A)(5)(d).

21 6. Diazepam is a Schedule IV controlled substance. A.R.S. § 36-
22 2515(A)(2)(n).

23 7. Carisoprodol is a Schedule IV controlled substance. A.R.S. § 36-
24 2515(A)(5)(a).

1 8. Zolpidem is a Schedule IV controlled substance. A.R.S. § 36-
2 2515(A)(2)(xx).

3 9. Viagra is a prescription-only medication.

4 **ALLEGED VIOLATIONS**

5 1. The Board possesses jurisdiction over the subject matter and over
6 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

7 2. Pursuant to A.R.S. § 32-1927.01(A)(1), the Board may discipline a
8 pharmacy technician trainee who has engaged in unprofessional conduct.

9 3. The conduct described in the Factual Allegations constitutes a violation of
10 A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful authority, the person
11 knowingly controls another person's property with the intent to deprive that other person
12 of such property). Theft is a crime of moral turpitude. *State v. Superior Court of Pima*
13 *County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978) (shoplifting involves
14 moral turpitude and bears a close relationship to the common law crime of larceny).

15 4. The conduct described in the Factual Allegations constitutes a violation of
16 A.R.S. § 13-3406(A)(1) (A person may not knowingly possess or use a prescription-only
17 drug unless the person obtains the prescription-only drug pursuant to a valid prescription
18 of a licensed prescriber). Furthermore, a person may not knowingly obtain or procure the
19 administration of a prescription-only drug by fraud, deceit, misrepresentation or
20 subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession
21 or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-
22 3406(B)(1).

23 5. The conduct described in the Factual Allegations constitutes a violation of
24 A.R.S. § 13-3406(A)(7) (A person may not sell, transfer or offer to sell or transfer a
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1 prescription-only drug). Such illegal transfer of a prescription-only drug is a class 6
2 felony. A.R.S. § 13-3406(B)(2).

3 6. The conduct described in the Factual Allegations constitutes a violation of
4 A.R.S. § 36-2531(E) (A person may not knowingly or intentionally acquire or obtain
5 possession of a controlled substance by means of forgery, fraud, deception or subterfuge).
6 A person who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony. A.R.S. § 36-
7 2531(E).

8 7. The conduct described in the Factual Allegations constitutes a violation of
9 A.R.S. § 36-2525(H) (Except when dispensed directly by a medical practitioner to an
10 ultimate user, a controlled substance included in schedule III or IV that requires a
11 prescription order as determined under state or federal laws shall not be dispensed
12 without a written or oral prescription order of a medical practitioner).

13 8. The conduct described in the Factual Allegations constitutes a violation of
14 A.R.S. § 36-2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521
15 *et seq.* to intentionally or knowingly distribute or dispense a controlled substance in
16 violation of section 36-2525). A person who violates A.R.S. § 36-2531(A)(1) is guilty of
17 a class 4 felony. A.R.S. § 36-2531(B).

18 9. Respondent's conduct, as described in the Factual Allegations, constitutes a
19 violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only
20 under one of the following conditions: (1) By a medical practitioner in conformance with
21 A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical
22 practitioner's manual signature; (3) On an electronically transmitted prescription order
23 containing the prescribing medical practitioner's electronic or digital signature that is
24 reduced promptly to writing and filed by the pharmacist; (4) On a written prescription
25 order generated from electronic media containing the prescribing medical practitioner's
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1 electronic or manual signature. A prescription order that contains only an electronic
2 signature must be applied to paper that uses security features that will ensure the
3 prescription order is not subject to any form of copying or alteration; (5) On an oral
4 prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By
5 refilling any written, electronically transmitted or oral prescription order if a refill is
6 authorized by the prescriber either in the original prescription order, by an electronically
7 transmitted refill order that is documented promptly and filed by the pharmacist or by an
8 oral refill order that is documented promptly and filed by the pharmacist.”)

9 10. The conduct and circumstances described above constitutes unprofessional
10 conduct pursuant to A.R.S. § 32-1901.01(C)(6) (“Committing a felony, whether or not
11 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-
12 related offense. In either case, conviction by a court of competent jurisdiction or a plea
13 of no contest is conclusive evidence of the commission.”).

14 11. The conduct and circumstances described above constitute unprofessional
15 conduct pursuant to A.R.S. § 32-1901.01(C)(8) (“Violating a federal or state law or
16 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous
17 drugs, controlled substances or precursor chemicals when determined by the board or by
18 conviction in a federal or state court.”).

19
20 DATED this 26th day of February, 2009.

21
22 ARIZONA STATE BOARD OF PHARMACY

23
24 By: 
25 HAL WAND, R.Ph.
26 Executive Director

1 ORIGINAL OF THE FORGOING FILED
this 26 day of FEB —, 2009, with:

2 Arizona State Board of Pharmacy
3 1700 West Washington Street, Suite 250
Phoenix, Arizona 85007

4 COPY OF THE FOREGOING MAILED
5 BY CERTIFIED & REGULAR FIRST-CLASS MAIL
this 26 day of FEB —, 2009, to:

6 Jeffrey Golden
7 3600 N. 6th Ave. #10
Phoenix, AZ 85013
8 Respondent

9 COPY OF THE FOREGOING MAILED
this 26 day of FEB —, 2009, to:

10 Christopher Munns
11 Assistant Attorney General
12 1275 W. Washington Street, CIV/SGO
Phoenix, Arizona 85007
Attorney for the Board

13 Elizabeth A. Campbell
14 Assistant Attorney General
15 1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
Attorney for the State

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